



PROVIDENCE WATER

Tap Water Delivers

July 22, 2015

The Hon. Jorge O. Elorza  
Mayor

Ricky Caruolo  
General Manager

Mrs. Luly Massaro  
Commission Clerk  
RI Public Utilities Commission  
89 Jefferson Boulevard  
Warwick, RI 02888

RE: Docket 4571-BCWA- Set 2

**BOARD OF DIRECTORS**

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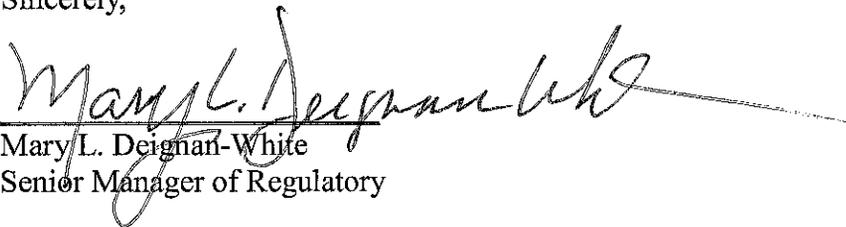
William E. O'Gara, Esq.  
Legal Advisor

Dear Mrs. Massaro:

Enclosed for filing an original and nine copies of Providence Water's responses to the second set of data requests from Bristol County Water Authority.

If you have any questions I can be reached at 521-6300, extension 7217.

Sincerely,

  
Mary L. Deignan-White  
Senior Manager of Regulatory

cc: Dk 4571 Service List  
File

**MEMBER**

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New England Water Works Assn.  
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552 Academy Avenue  
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**BCWA 2-1:** With respect to Providence's response to BCWA 1-11, please provide the Executive Session minutes dated August 16, 2006 referenced in the response.

**RESPONSE:**

Prepared based on advice from counsel - Objection. These minutes were properly sealed pursuant to the Open Meetings Act. "Minutes of an executive session meeting sealed pursuant to the Open Meetings Act are exempt from public disclosure." *The Attorney General's Guide to Open Government in Rhode Island*, 24 (6th ed. 2012); see also *Gorman v. Tiogue Fire District*, PR 97-04. In addition, the Open Meetings Act (OMA) provides that every meeting of a public body shall be open, unless closed under one of several exceptions. One exception allows a closed meeting for "[a] matter related to the question of the investment of public funds where the premature disclosure would adversely affect the public interest." R.I.G.L. 42-46-5(a)(7). A separate exception to the OMA includes "[a]ny discussions or considerations related to the acquisition or lease of real property for public purposes...." R.I.G.L. 42-46-5(a)(5); see *In re Rhode Island Council on the Arts*, ADV OM 00-04.

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**BCWA 2-2:** With respect to Providence's response to BCWA 1-14, please provide the Executive Session minutes dated August 12, 2009 referenced in the response.

**RESPONSE:**

Prepared based on advice from counsel - Objection. These minutes were properly sealed pursuant to the Open Meetings Act. "Minutes of an executive session meeting sealed pursuant to the Open Meetings Act are exempt from public disclosure." *The Attorney General's Guide to Open Government in Rhode Island*, 24 (6th ed. 2012); *see also Gorman v. Tiogue Fire District*, PR 97-04. In addition, the Open Meetings Act (OMA) provides that every meeting of a public body shall be open, unless closed under one of several exceptions. One exception allows a closed meeting for "[a] matter related to the question of the investment of public funds where the premature disclosure would adversely affect the public interest." R.I.G.L. 42-46-5(a)(7). A separate exception to the OMA includes "[a]ny discussions or considerations related to the acquisition or lease of real property for public purposes...." R.I.G.L. 42-46-5(a)(5); *see In re Rhode Island Council on the Arts*, ADV OM 00-04.

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**BCWA 2-3:** With respect to Providence's response to BCWA 1-15:

- a. Please provide all legal authority including all laws, statutes, ordinances, and charter provisions that support Providence Water's position that as a department of the City of Providence, the Providence Water Supply Board is legally eligible, authorized and allowed to purchase and take title to real property.
- b. Please provide all legal authority including all laws, statutes, ordinances, and charter provisions that support Providence Water's position that as a department of the City of Providence, it is obligated to pay property tax to the City of Providence.
- c. Please provide all legal authority including all laws, statutes, ordinances, and charter provisions that allow the City of Providence to levy property taxes against a department of the City of Providence.
- d. Please list all departments of the City of Providence that pay property taxes to the City of Providence.
- e. Does Providence Water currently pay any taxes, including property and tangible taxes, to the City of Providence? If so, how much.

**RESPONSE:**

- a. There are some ambiguities in the law regarding the legal status of the Providence Water Supply Board ("Board" or "PWSB") and its relationship to the City of Providence ("City").

The Rhode Island Supreme Court recognizes PWSB and the City of Providence (the "City") as separate entities. *See Root v. Providence Water Supply Bd.*, 850 A.2d 94, 96 n.1 (R.I. 2004) (questioning "which entity – the water board or the city – actually acquired title to the property" at issue). The Court holds PWSB to be "an entity that is independent of city control." *In re Providence Water Supply Bd.'s Application to Change Rate Schedules*, 989 A.2d 110, 112-13 (R.I. 2010). In transactions between PWSB and the City, "an arm's length relationship must exist," and "such a relationship must be absolutely and scrupulously maintained." *See Audubon Soc. of Rhode Island v. Malachowski*, 569 A.2d 1, 3 (R.I. 1990). The Court accepts the PWSB's description of its relationship with the City as an "affiliated corporation." *Id.* at 6. Further, the Court

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itself describes the PWSB as “a public utility and an *agency* of the city.” *Morel v. Napolitano*, 64 A.3d 1176, 1178 (R.I. 2013) (*emphasis supplied*).

In court proceedings, PSWB and the City are sued as separate defendants. *See Root*, 850 A.2d at 97; *R&R Assocs. v. City of Providence Water Supply Bd.*, 765 A.2d 432, 433 (R.I. 2001); *Elman v. Providence Water Supply Bd.*, 2003 R.I. Super. LEXIS 7, \*1 (Jan. 10, 2003). In what might be the most telling indication of independence, PWSB is even empowered to act adversely to the City. *See United Lending Corp. v. Providence*, 827 A.2d 626, 629 (R.I. 2003) (noting that, when the City failed to protect its interest in foreclosed property, PWSB sold the City’s property to satisfy outstanding water liens.)

PWSB was created by act of the General Assembly in 1915 to “determine as to whether a part of the north branch of the Pawtuxet River . . . would be the most available and desirable source of supply of pure and wholesome water for the City of Providence.” *See* P.L. 1915, ch. 1278 (the “1915 law”). The 1915 law further granted PWSB powers necessary for the design and construction of a reservoir and aqueduct system (collectively, the “Reservoir”), and provides in its second sentence that Board members will hold their positions “until the duties of said board hereunder are completed.” The 1915 law is extremely detailed about the construction of the Reservoir, but provides neither prescription nor proscription as to the long-term duties and powers of the Board once the reservoir was completed.

The 1915 law does direct in Section 4 that all “land” be obtained on behalf of and held by the City of Providence. However, Section 22 then defines “land” in a manner that includes only the land, water, and accompanying rights and estates related to the various components of the actual Reservoir itself. The 1915 law is simply silent as to whether the Board, if it chose to continue in existence after the completion of the Reservoir, could purchase chattel property or an administrative facility in metropolitan Providence in furtherance of its long-term duties.

Subsequently, the composition and duties of the Board were updated by Section 1101 of the City of Providence Home Rule Charter of 1980 (“Section 1101”). Paragraph 1(a) of Section 1101 of the Home Rule Charter lists the powers and duties of the Board, which include “without limitation” supervising and managing the water system of the City and other areas in its jurisdiction, protecting and conserving the water supply, appointing a chief engineer, and appointing a legal advisor. In addition, the Providence Code of Ordinances includes provisions relating to PWSB.

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In the instant matter, PWSB would take title to the property subject to a deed restriction, setting forth that the property shall be used solely for public water supply purposes, and that, if the property is used for purposes other than the public water supply, the fair market value at the time of the change in use shall be paid to or applied for the benefit of ratepayers of the water supply system.

- b. As an entity established under Rhode Island law, any real property owned by PSWB is subject to the property taxes of the municipality in which that property resides unless exempted by state law.
- c. As an entity established under Rhode Island law, any real property owned by PSWB is subject to the property taxes of the municipality in which that property resides unless exempted by state law.
- d. I am not aware of any City of Providence Departments that are paying taxes to the City of Providence except for the Providence Redevelopment Agency
- e. No. Providence Water does not pay any taxes to the City of Providence. Providence Water pays taxes to the following host communities: Scituate, Foster, Gloucester, Cranston, Johnston, North Providence, West Warwick, Warwick, Chepachet Fire District, West Gloucester Fire District and Harmony Fire District.

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**BCWA 2-4:** In a document entitled "Providence Water Central Operations Facility (COF) Presentation 2015" (see attached excerpt), a listed "Advantage" of the Dupont Drive Site is the "Potential of paying taxes to the City." Please explain this statement in further detail. The explanation should include, but not be limited to:

- a. Why the payment of taxes is only listed as "potential."
- b. Upon what factors the payment of property taxes to the City of Providence depends.
- c. Whether the payment of taxes to the City of Providence depends on the Commission allowing Providence Water to pay this expense.
- d. If the answer to subsection c. is in the affirmative, provide all legal authority Providence Water relies that would allow the Commission to authorize the payment of property taxes by municipal water authority to the municipality within which it is a department.

**RESPONSE:**

As to why the payment of taxes was listed under "Advantage," the payment of property taxes to the City would result in equal treatment of our host communities. PWSB presently pays taxes to other host communities, but does not pay them to Providence. As such, customers in Providence presently subsidize a small but real portion of the cost of operations, because Providence, unlike other host communities such as Scituate, receives no revenue to reimburse it for the lost tax revenue. As a matter of equity, if the PUC permits the PWSB to pay taxes to other host communities, it should be permitted to pay taxes to the City of Providence, given Providence's status as a host community.

- a. PSWB lists the payment of property taxes to the City of Providence as "potential" because it is uncertain whether such taxes will be assessed by the City, or to what amount they may be assessed.
- b. The amount of property taxes paid by PWSB to the City is entirely a function of the tax rate and assessed value of the property as set by the City Tax Assessor.
- c. PWSB will pay all property taxes lawfully levied upon it. The Public Utilities Commission has the authority to determine whether, and to what extent, the inclusion of any or all of

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those property taxes may constitute “improper and unreasonable rates” that cannot be passed along to ratepayers. *See In re Kent Cnty. Water Auth. Change Rate Scheds.*, 996 A.2d 123, 130 (R.I. 2010) (citing R.I. Gen Laws § 39-1-1(c)). While the Commission may not manage the utility or exercise the prerogatives of ownership, it is empowered to determine the appropriate funding level for programs undertaken and how much the ratepayers should pay on an annual basis. *See id.* at 131 (citing *Providence Water Supply Bd. v. Pub. Utils. Cmmsn.*, 708 A.2d 537, 543-40 (R.I. 1998)).

- d. Authorizing (or forbidding) the payment of taxes by a regulated utility is not a power granted to the Commission by Chapter 9-1 of the General Laws; rather, the Commission may lawfully determine whether any or all of the cost associated with those taxes may be reflected in the utility’s rates to consumers. *See id.* at 130-31 (citing *Providence Water Supply Bd. v. Pub. Utils. Cmmsn.*, 708 A.2d 537, 543-40 (R.I. 1998)).

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**BCWA 2-5:** In a document entitled "Providence Water Central Operations Facility (COF) Presentation 2015" (see attached excerpt), one of the listed "Current Building Issues" is "Not paying taxes to the City." Please explain why this is an issue, and why a new COF should be built, in part, to address this "issue."

**RESPONSE:**

Currently, PWSB does not pay taxes to the City of Providence as it does not own the current facility.

The proposed COF is not being built to address the "Issue" referenced above.

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**BCWA 2-6:** With respect to Providence's response to BCWA 1-15, Providence states that the current property taxes total \$324,516 for 125 Dupont Drive:

- a. Will the yearly taxes be prorated at the closing?
- b. Will Providence Water pay a portion of the prorated taxes?
- c. If the answer to part b. is in the affirmative, where will Providence Water get the funds to pay the pro-rated taxes? Will they be paid from the CIP Fund?
- d. Will Providence Water pay the ongoing property taxes after the closing?
- e. If the answer to part d. is in the affirmative, where will Providence Water get the funds to pay the ongoing taxes? Will they be paid from the CIP Fund?
- f. What is the current assessed value of the Dupont Drive property upon which the current taxes are based?
- g. What is the current tax rate for the Dupont Drive Property?
- h. Please provide the exact amount of property taxes that the current owner of the Dupont Drive property pays to the City of Providence.
- i. Has Providence Water estimated how much the property taxes will increase after it completes it improvements to the property?

**RESPONSE:**

- a. Yes.
- b. Yes.
- c. Initially it is anticipated that any taxes due at the time of closing will be funded out of the CIP Fund and then the CIP Fund will be reimbursed from the Operating Fund.
- d. Yes. See response BCWA 2-4c.
- e. Any on-going taxes will be paid out of the Operating Fund.
- f. The current assessed value of the Dupont Drive property per the City Tax assessor is \$8,870,500.00.
- g. The current tax rate for the Dupont Drive property is \$36.75 per \$1,000.00.
- h. The exact amount of property taxes that the current owner of the Dupont Drive property pays to the City of Providence is \$325,990.88.
- i. No.

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**BCWA 2-7:** In response to BCWA 1-23 n., Providence Water indicates it “has paid permit fees to the City of Providence for many years.”

- a. Please state how much Providence Water has paid in permit fees in the past five years and identify the permits for which it paid.
- b. Please provide all legal authority including all laws, statutes, ordinances, and charter provisions that allow the City of Providence to charge one of its own departments permit fees.
- c. Please list all departments of the City of Providence that pay permit fees to the City of Providence.

**RESPONSE:**

- a. Please see below the schedule of permit fees paid to The City of Providence from July 1, 2010 through June 30, 2015. These are fees paid out of the Operating Fund. Any permit fees associated with any IFR or Capital projects are not identifiable as they are included as part of the project costs through the bid process.

Schedule of Permit Fees paid to The City of Providence						
PERMIT TYPE	FY2011	FY2012	FY2013	FY2014	FY2015	TOTALS
No Parking Sign Permit Fees	\$ 1,427.00	\$ 1,320.00	\$ 3,117.50	\$ 6,005.00	\$ 5,355.00	\$ 17,224.50
Street Closing Permit Fees	\$ 616.00	\$ -	\$ 7,650.00	\$ 9,552.50	\$ 9,525.00	\$ 27,343.50
Street Opening Permit Fees	\$ 16,350.00	\$ 22,575.00	\$ 30,150.00	\$ 32,247.50	\$ 19,125.00	\$ 120,447.50
<b>TOTALS</b>	<b>\$ 18,393.00</b>	<b>\$ 23,895.00</b>	<b>\$ 40,917.50</b>	<b>\$ 47,805.00</b>	<b>\$ 34,005.00</b>	<b>\$ 165,015.50</b>

- b. See response BCWA 2-3. PWSB is considered an enterprise fund of the City of Providence and is self-supporting.
- c. Per the Department of Inspections and Standards, other departments of the City of Providence do not pay permit fees to the City.

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**BCWA 2-8:** Please state why the Dimeo budget included in response to BCWA 1-23 includes costs for "Museum" included in the reception area.

**Response:** Over the years, Providence Water has collected many artifacts from the water system such as wooden pipe, antique water meters, antique hydrants, photos from the construction of the Gainer dam, etc. As part of the work in the reception area, Providence Water is planning on including a small area that displays some of the remarkable history of Providence Water.

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**BCWA 2-9:** With respect to Providence's response to BCWA 1-25 and 1-26, please provide the Executive Session minutes dated May 4, 2011, February 21, 2007 and August 16, 2006 referenced in the responses.

**RESPONSE:**

Prepared based on advice from counsel - Objection. These minutes were properly sealed pursuant to the Open Meetings Act. "Minutes of an executive session meeting sealed pursuant to the Open Meetings Act are exempt from public disclosure." *The Attorney General's Guide to Open Government in Rhode Island*, 24 (6th ed. 2012); *see also Gorman v. Tiogue Fire District*, PR 97-04. In addition, the Open Meetings Act (OMA) provides that every meeting of a public body shall be open, unless closed under one of several exceptions. One exception allows a closed meeting for "[a] matter related to the question of the investment of public funds where the premature disclosure would adversely affect the public interest." R.I.G.L. 42-46-5(a)(7). A separate exception to the OMA includes "[a]ny discussions or considerations related to the acquisition or lease of real property for public purposes...." R.I.G.L. 42-46-5(a)(5); *see In re Rhode Island Council on the Arts*, ADV OM 00-04.

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**BCWA 2-10:** With respect to Providence's response to BCWA 1-1 (b):

- a. Please explain if Providence Water's current Trust indenture with the RICWFA is being defeased or if the terms of the existing Trust Indenture will still apply. If they will still apply, explain why the coverage requirements are not known.
- b. Will a certificate from a Consulting Engineer / Accountant be required to show projected coverage? If so, please provide such a certificate or if one is not available yet, the projections of coverage under the terms of the existing Trust Indenture for the first three full fiscal years after the issuance of the bonds.

**RESPONSE:**

- a. The current Trust Indenture is not being defeased. The existing terms will still apply. The debt service coverage requirements are as follows (Article VI, Section 603):

".....the City and the Board will each take all actions within its power to establish and maintain Rates and Charges at levels sufficient so that total Net Revenues in each Fiscal Year during which Bonds are Outstanding, shall equal at least.....and (b) for all other Bonds, one hundred twenty-five percent (125%) of the Debt Service Requirement during such fiscal year..."

- b. Please refer to the response to PUC request 1-7 that references the Trust Indenture directly. The Indenture requires, as a condition of issuing additional bonds that PWSB obtain a certificate of a Consulting Engineer or Certified Public Accountant selected by the Board and satisfactory to the Trustee (a) setting forth the estimated annual Net Revenues for each of the three full Fiscal Years following the issuance of such Bonds (including the Fiscal Year in which such Bonds are issued), after giving effect to any increases or decreases in Rates and Charges projected to be in effect for such period, and to the Series Debt Service Reserve Fund Requirement attributable to such Bonds and to any additional Revenues projected to be available during such period, and (b) showing for each of such Fiscal Years that the estimated annual Net Revenues for such Fiscal Year together with amounts in the Stabilization Account, if any, available in such Fiscal Year (as calculated by an Authorized Officer at the time of issuance of such Bonds) will be at least equal to (i) one hundred percent (100%) for any Agency Bonds issued on or before March 23, 2005 and (ii) for all other Bonds, one hundred twenty-five percent (125%) (or such higher amount as may be set forth in the Supplemental

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Indenture authorizing the issuance of such Series of Bonds) of the Debt Service Requirement for such Fiscal Year (based on debt service net of any interest rate subsidy); provided that the Consulting Engineer's or Certified Public Accountant's certificate shall not project any increase in Rates and Charges during the first full Fiscal Year of the projection period which has not been adopted by the Board and approved by the Public Utilities Commission for such Fiscal Year on or before the date of such certificate;

A certificate will be required at the time of issuance of the bonds so it is not yet available. We have asked our financial advisor to do a coverage projection.

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**BCWA 2-11:** With respect to Providence's response to BCWA 1-1 (d), considering this response, is Providence Water asking for more than just the projected debt service on the new bonds for the COF (plus the applicable operating revenue)? If so, please detail those amounts.

**RESPONSE:**

Yes. PWSB is asking for the amount necessary to cover debt service and the associated 125% required debt service coverage requirement as outlined in Article VI, Section 603(2) of the Trust Indenture Between City of Providence and U.S. Bank National Association, as Trustee securing Water System Revenue Bonds dated June 5, 2008. See response to PUC request 1-7.

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**BCWA 2-12:** Please provide an accounting (estimate) of all amounts that have been borrowed from the Capital fund and Line of Credit over the past five years, and the purpose of each borrowing.

**RESPONSE:**

In October 2010, Providence Water borrowed \$1,000,000.00 from the Capital Fund to fund the Chemical & Sludge Fund payments to Synagro for sludge maintenance. When the contract was awarded, it was based on the assumption that 1,800 dry tons of sludge residuals would be produced per year. However, stricter government regulations resulted in an increased amount of the ferric sulfate coagulant used in the treatment process, raising the actual sludge residual production significantly. For cycle 2 of the contract, the first year payment was \$500,000.00, the second year payment was \$520,000.00 and the third year payment was estimated at \$1,200,000.00. Because of the increased ferric sulfate coagulant usage, the actual invoiced amount at the end of cycle 2 was approximately \$2,200,000.00 or \$1,000,000.00 over budget. As of today, the balance owed to the Capital Fund is \$400,000.00.

Providence Water has only utilized our Line of Credit once in the past five years. On 8/30/12, Providence Water took an advance of \$3,000,000.00 for IFR cash flow needs. The Line of Credit was repaid on 8/27/13.

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**BCWA 2-13:** Does Providence Water require approval or authorization from the Providence City Council to enter into the \$30 million borrowing proposed for the COF? If the answer is in the affirmative, please state:

- a. Why Providence Water needs approval or authorization from the City Council to enter into the proposed borrowing, and provide all legal authority including all laws, statutes, ordinances, and charter provisions that require Providence Water to seek such approval or authorization.
- b. Whether Providence Water has received approval or authorization.

**RESPONSE:**

- a. The PWSB is required to have approval or authorization from the City Council to enter into the proposed borrowing because PWSB is a Board of the City of Providence and it has no independent source of borrowing. Therefore, there are no laws, statutes, ordinances, or charter provisions that address Providence Water's borrowing authority.
- b. The PWSB is currently involved in the approval process with the City to authorize \$39 million in revenue bonds. We expect final approval shortly.